

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE:

MARTIN JAMES DEKOM, SR.

CASE NO.: 19-30082-KKS

CHAPTER: 13

Debtor.

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**ORDER OVERRULING, IN PART, *DEBTOR'S OBJECTIONS TO***  
***CLAIM OF NATIONSTAR* (DOCS. 63, 76 AND 158)**

THIS MATTER is before the Court on *Debtor's Objections to Claim of Nationstar* ("Objections," Docs. 63, 76 and 158).<sup>1</sup> The Court held a preliminary hearing on the Objections on January 22, 2020, at which Debtor and counsel for Nationstar Mortgage, LLC d/b/a Mr. Cooper ("Nationstar") appeared.

**BACKGROUND**

In 2007, Debtor executed a Mortgage and Note with Countrywide Bank FSB, regarding real property located at 34 High Street, Manhasset, New York.<sup>2</sup> He defaulted on that mortgage and stopped making

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<sup>1</sup> Nationstar filed a *Response to Debtor's Objection to Claim of Nationstar: Objections VII* (Doc. 96) and *Response to Debtor's Objections I-VI to Claim of Nationstar* (Doc. 208).

<sup>2</sup> The facts in this paragraph are set forth by the District Court for the Eastern District of New York in *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 230, *Report and Recommendation* (E.D.N.Y. Feb. 26, 2019).

payments in 2011.<sup>3</sup> On December 2, 2014 the Supreme Court for the State of New York, Nassau County issued a *Judgment of Foreclosure And Sale After Inquest and Appointment of Referee* (“Final Judgment of Foreclosure”).<sup>4</sup> In 2015, Debtor appealed the Final Judgment of Foreclosure.<sup>5</sup> On May 16, 2018, the Appellate Division, Second Judicial Department, Supreme Court of the State of New York affirmed the Final Judgment of Foreclosure.<sup>6</sup>

The Final Judgment of Foreclosure is, as Nationstar alleges, final. Debtor did not timely file an appeal of the Second Judicial Department’s orders affirming the Final Judgment of Foreclosure and denying Debtor’s motion for leave to appeal. Instead, several months after those rulings Debtor filed a motion with the Court of Appeals for the State of New York seeking leave to file an appeal. As of January 15, 2020, that motion remains pending.<sup>7</sup> The instant Objections are the most recent of Debtor’s attempts to nullify the Final Judgment of Foreclosure. None of Debtor’s

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<sup>3</sup> *Id.* at p. 4.

<sup>4</sup> *Id.* at p. 5.

<sup>5</sup> *Id.* Debtor also appealed the trial court’s orders denying his motions to vacate the default entered against him and to vacate or stay the enforcement of the Final Judgment of Foreclosure. Doc. 118, p. 56.

<sup>6</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 230, p. 5, *Report and Recommendation* (E.D.N.Y. Feb. 26, 2019).

<sup>7</sup> Doc. 223, p.2.

efforts to attack the Final Judgment of Foreclosure in other courts have been successful.<sup>8</sup>

## DISCUSSION

To the extent that they constitute yet another attempt to vacate or re-litigate issues determined in the Final Judgment of Foreclosure, Debtor's Objections are barred by *res judicata* and the *Rooker-Feldman* doctrine.

**Debtor is barred by *res judicata*, or claim preclusion, from relitigating the Final Judgment of Foreclosure.**

The doctrine of *res judicata*, also known as claim preclusion, bars the filing of claims which were, or could have been, raised in an earlier proceeding.<sup>9</sup> The following elements must be present for claim preclusion to apply: “(1) there must be a final judgment on the merits, (2) the decision must be rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must be identical in both suits; and (4) the same cause of action must be involved both cases.”<sup>10</sup> Where claim

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<sup>8</sup> *In Re: Martin Dekom*, No. 18-1971 (2nd Cir. dismissed Nov. 7, 2018); *Dekom v. Fannie Mae*, No. 19-3425 (2nd Cir. filed Oct. 21, 2019); *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL (E.D.N.Y. opened May 4, 2017); *Dekom v. Goldman Sachs & Co., et al.*, Case No.: 2:18-cv-04078-JFB-ARL (E.D.N.Y. closed Oct. 29, 2018).

<sup>9</sup> *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990); *See, In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 n.3 (11th Cir. 1990).

<sup>10</sup> *Citibank, N.A.*, 904 F.2d at 1501.

preclusion applies it precludes relitigation of the legal theories presented in the prior case as well as all legal theories and claims arising out of the same nucleus of operative facts.<sup>11</sup>

Nationstar filed Proof of Claim 1-1 on February 20, 2019 asserting a secured claim of \$544,411.15. In the Objections, Debtor raises several arguments relating to the validity of the claim, the underlying Final Judgment of Foreclosure and the legitimacy of the mortgage note. Debtor also disputes various amounts listed in attachments to the Proof of Claim, specifically regarding city/county taxes.

It is beyond dispute that: (1) the Final Judgment of Foreclosure is a final judgment on the merits; (2) the New York courts that rendered the Final Judgment of Foreclosure and affirmed it on appeal are courts of competent jurisdiction; (3) the parties involved in the suit that culminated in the Final Judgment of Foreclosure and subsequent appeal (Debtor and Nationstar) are identical to those involved in the present contested matter; and (4) the Final Judgment of Foreclosure addresses all issues that Debtor raised, or could have raised, as to Nationstar's right to foreclose on Debtor's New York real property, including the validity of

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<sup>11</sup> *Seminole Tribe of Fla. v. Biegalski*, 757 F. App'x 851, 856–57 (11th Cir. 2018).

the note and mortgage, ownership of the mortgage, and enforceability of the debt. The only issue not addressed in conjunction with the Final Judgment of Foreclosure and appeal is the amount that Nationstar asserts is due over and above the amount set forth in the Final Judgment of Foreclosure.

The issues Debtor asserts in the Objections are virtually identical to those he has previously raised in federal district court. The District Court has held those issues to be barred by the *Rooker-Feldman* doctrine and *res judicata*.<sup>12</sup> The result in this Court must be the same.

**This Court lacks subject matter jurisdiction to review the Final Judgment of Foreclosure under the *Rooker-Feldman* doctrine.**

The *Rooker-Feldman* doctrine applies to prevent federal courts from reviewing “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”<sup>13</sup> The *Rooker-Feldman* doctrine derives

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<sup>12</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 230, *Report and Recommendation* (E.D.N.Y. Feb. 26, 2019); *Id.* at Doc. 234, *Order*; and *Id.* at Doc. 249, *Memorandum and Order*.

<sup>13</sup> *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine is inapplicable if the federal action was commenced before the state proceedings ended. *Bertram v. HSBC Mortgage Services, Inc. (In re Bertram)*, 746 Fed. Appx. 943, 949 (11th Cir. 2018) citing *Nicholson v. Shafe*, 558 F.3d 1266, 1274-75 (11th Cir. 2009).

from two U.S. Supreme Court cases in which the plaintiffs, who had litigated and lost in state court, filed suits in federal courts seeking to obtain a review and reversal of adverse state court judgments.<sup>14</sup> As applicable here, the Eleventh Circuit has held that state court proceedings end, for purposes of the *Rooker-Feldman* doctrine when “the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved.”<sup>15</sup>

A state proceeding ends when the losing party allows the time for appeal to expire.<sup>16</sup> Under New York civil practice rules, an appeal as of right must be taken within thirty (30) days from service of a copy of the judgment or order appealed.<sup>17</sup> The time within a party must move for permission to appeal is thirty (30) days from the date of service of the order complained of.<sup>18</sup> The record is devoid of any indication that Debtor filed any appeal; much less a timely appeal. About three (3) months after the adverse ruling on appeal, on November 5, 2018 Debtor filed a motion for leave to appeal with the Court of Appeals for the State of New York.<sup>19</sup>

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<sup>14</sup> *Exxon Mobil Corp.*, 544 U.S. at 283.

<sup>15</sup> *In re Bertram*, 746 Fed. Appx. at 949.

<sup>16</sup> *Id.*

<sup>17</sup> N.Y.C.P.L.R. § 5513 (McKinney 2019). If service is by mail, a specified number of days is added to the thirty day limitation. *Id.* at (d).

<sup>18</sup> N.Y.C.P.L.R. § 5513(b) (McKinney 2019).

<sup>19</sup> Doc. 223, p.2. That motion was directed to two orders entered by the Appellate Division, Second Judicial Department, Supreme Court of the State of New York (“Second Department”)

A letter Debtor obtained from the Clerk of Court for the New York Court of Appeals reflects that as of January 15, 2020, that court had not yet ruled on Debtor's motion for leave to appeal.<sup>20</sup>

In order to stay enforcement of a New York judgment pending appeal, a party must post a bond or other accommodation.<sup>21</sup> The state proceedings have ended and Debtor's arguments as to the validity of the Final Judgment of Foreclosure are barred.

### CONCLUSION

All portions of Debtor's Objections that pre-existed the Final Judgment of Foreclosure and appeal are barred by the *Rooker-Feldman* doctrine. For the reasons stated above and at the hearing, it is

#### ORDERED:

1. *Debtor's Objections to Claim of Nationstar* (Docs. 63, 76 and 158) are OVERRULED, as to:
  - a. The finality of the Final Judgment of Foreclosure;

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on May 16 and August 10, 2018, respectively: the first was a *Decision & Order* in which the Second Department ruled against Debtor on the merits; the second was a *Decision & Order on Motion* which denied Debtor's motion to reargue, or in the alternative for leave to appeal to the Court of Appeals. Doc. 223-1, pp. 4-5, 7.

<sup>20</sup> Doc. 223, p. 2.

<sup>21</sup> N.Y.C.P.L.R. § 5519(a)(2),(6) (McKinney 2019).

- b. Nationstar's standing to appear in this case and seek stay relief; and
  - c. The validity of the note, mortgage and other documents underlying the Final Judgment of Foreclosure.
2. Debtor's Objections to the amounts of Nationstar's claim that have accrued after issuance of the Final Judgment of Foreclosure shall be heard at the continued evidentiary hearing.<sup>22</sup>
3. Any party wishing to appear and be heard at the evidentiary hearing must file and serve witness and exhibit lists, and a statement of undisputed facts, no later than five business (5) days prior to the hearing.

DONE AND ORDERED on January 30, 2020.



KAREN K. SPECIE  
Chief U. S. Bankruptcy Judge

cc: all parties in interest

Counsel for Nationstar Mortgage, LLC d/b/a Mr. Cooper is directed to serve a copy of this Order on interested parties and file proof of service within 3 days.

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<sup>22</sup> Docs. 233 and 234.